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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,641	12/30/2003	Lyle Berman		6896

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EXAMINER

LAYNO, BENJAMIN

ART UNIT PAPER NUMBER

3711

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/748,641	BERMAN, LYLE	
	Examiner	Art Unit	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

1. Applicant's claim for domestic priority on page 1 of the specification entitled "HISTORY" is acknowledged. However, the provisional application Serial No. 60/003,856, US Patent 5,829,748, provisional application 60/016,256, provisional application 60/021,073, US Patent 5,964,463, and US Patent 6,213,876 and upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-20 of this application. These provisional applications and patents only list Naif Moore, Jr. as the sole inventor. Lyle Berman is not listed as an inventor in any of these provisional applications and patents. ***Election/Restrictions***

2. This application contains claims directed to the following patentably distinct species of the claimed invention: Claims 2 and 3 are directed to a card game. Claims 4 and 5 are directed to a dice game. Claims 6 and 7 are directed to a slot machine.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 8-20 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with Gregory Friedlander on 03/28/05 a provisional election was made with no indication of traverse to prosecute the invention of the slot machine, claims 6 and 7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-5 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 8, 9-11, 13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ornstein 431'. The patent to Ornstein 431' discloses a method of wagering in a casino game. To play Ornstein 431' game, a player selects at least one game of chance having hands of blackjack. The player selects the number of consecutive hands winning hands to play, col. 4, lines 17-25. A player may place a wager in region C4 indicating the player expects to receive a total four consecutive winning hands. If a player receives less than four consecutive winning hands (e.g. one win, two consecutive wins, or three consecutive wins), the player receives a payout based on the statistical probability of winning less than the total number (four) of consecutive winning hands, col. 4, lines 29-45. The player receives a payout if the player receives four consecutive winning hands, col. 4, lines 47-51. **Claim Rejections -**

35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' as applied to claim 1 above, and further in view of Ornstein 885'.

The patent to Ornstein 885' teaches that it is known to play blackjack on a slot machine, Fig. 2 and place a wager on the number of consecutive wins a player receives while playing the slot machine, col 4, line 33 to col. 21. In view of such teaching, it would have been obvious to provide a slot machine embodiment for playing Ornstein 431' game. During game play on the slot machine embodiment, if a player placed a wager for four consecutive winning hands, and if a player received less than four consecutive winning hands (e.g. one win, two consecutive wins, or three consecutive wins), the player would have received a payout based on the statistical probability of winning less than the total number (four) of consecutive winning hands.

In regard to claim 7, networked gaming machines are well known the art. Therefore, it would have been obvious to incorporate a network of slot machine to play Ornstein 431' game.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' as applied to claim 1 above, and further in view of Moor, Jr. 463'.

Moore, Jr. 463' teaches that it is known to provide a predetermined period of time for playing hands on a slot machine in order to win a bonus, col. 13, line 49 to col. 14, line 21. In view of such teaching, it would have been obvious to provide a time limit for receiving consecutive winning hands in Ornstein 431' game for business purposes.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' as applied to claim 1 above, and further in view of Celona.

The patent to Celona teaches that in the gaming art that if one player win a bonus or jackpot payout, that bonus or jackpot payout may be divided among other

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player. In view of such teaching, it would have been obvious to modify Ornstein 431' game such that if one player wins a bonus payout, that payout would have been divided among the other players. This modification would have made Ornstein 431' game more exciting to play.

11. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ornstein 431' in view of Ornstein 885' as applied to claims 6 and 7 above, and further in view of Acres et al.

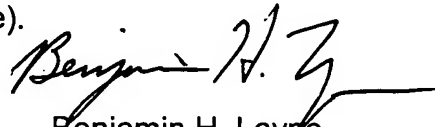
The patent to Acres teaches that it is known in the networked slot machine art to provide a player tracking card 120 having a code for tracking a player's frequency of playing slot machines. In view of such teaching, it would have been obvious to provide a player tracking cards to Ornstein 431' game. This modification would have information to casino on how often a player is playing the slot machines for business purposes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl